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ABSTRACT

Justice John Paul Stevens of the United States Supreme Court has ruled on obscenity cases in seven instances since his appointment. His rulings reveal that he regards obscenity as a nuisance rather than as a danger threatening to undermine the nation's morality, that he supports a nationwide standard to adjudicate obscenity cases, and that he believes that sexually provocative material cannot be banned but that local communities may limit how or where it is available, that broadcasting needs to be regulated to a greater extent than other forms of communication, and that material must be judged only by examination of the material itself and not on the basis of advertising claims. (TJ)

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JUSTICE JOHN PAUL STEVENS

and

The Erotic Boomerang

Marc Lieberman

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Introduction

Since 1957, obscene expression has been denied First Amendment protection by the U. S. Supreme Court, on grounds that obscenity lacks social utility.[1] Differentiating between what is and what is not obscene is a problem that has plagued the Court ever since, however. There is an uncertain line that separates the lewd from what is protected; for nearly 16 years, the Supreme Court tried to give this line a clear and precise definition, but the attempt was only partially successful. Then in 1973, the Court gave each state more responsibility for drawing the line between protected and unprotected sexual material. Every state was delegated the authority to define and regulate obscenity, in accordance with several stipulated guidelines.[2] Yet, this measure still did not prevent obscenity cases from reaching the U. S. Supreme Court. Harold Nelson and Dwight Teeter, authors of the text Law of Mass Communications, assert that the Supreme Court's attempt to shift jurisdiction for obscenity cases is much like "a child trying to throw away an unwanted boomerang."[3]

John Paul Stevens on Obscenity

The most recent addition to the U. S. Supreme Court, Justice John Paul Stevens, has voiced his opinion at length concerning obscenity in seven decisions since his appoint-

ment to the high court in December of 1975.[4] Analysis of these seven opinions reveals much about the new justice's stand on obscenity. Stevens regards obscenity as a nuisance rather than a danger that threatens to undermine the country's morality,[5] and he has expressed the desire to re-formulate contemporary obscenity law in such a manner that a more precise definition of what constitutes obscenity can be realized nationwide.[6]

Stevens has tried to do this by urging that a uniform national standard be reinstated to adjudicate obscenity cases.[7] At the present time, each state and locality in America can set its own standard for determining obscenity under the Miller v. California precedent of 1973.[8] Criteria for judging what constitutes obscenity vary from one community to the next, and because of the many confusing contradictions, obscenity standards are criticized for being too vague and equivocal. Stevens supports fellow Justice Brennan's disdain for anything but a national standard for determining obscenity. Brennan wrote in 1964 that it was wrong for

> the constitutional limits of free expression in the nation (to). . . vary with state lines. The constitutional status of an allegedly obscene work must be determined on the basis of a national standard. It is, after all, a national Constitution we are expounding.[9]

Since 1973, however, Brennan has often stated that he does not believe prosecution for any violation of obscenity statutes is warranted, except in cases where children or unwilling adults are confronted with obscene expression.

Presently, obscenity cases are tried under the guidelines set out in the Miller v. California case.[10] In this litigation, the Supreme Court decided that obscenity was such an enigmatic issue that each locality should be allowed to determine for itself what

expression violates the mores of the community. Three guidelines, to be considered in conjunction, were established for communities to follow in determining whether expression was obscene.

Firstly, if an average person in the community has a tendency to feel that the expression in its entirety appeals to the prurient interest, the work may be obscene. Secondly, if the expression is patently offensive (i.e., it is revolting, but not necessarily erotic) in regard to behavior specifically outlawed by statute, the jury may be persuaded to condemn it. Thirdly, expression can be considered obscene if it wholly lacks serious literary, artistic, political, or scientific value.

Smith v. U.S.[11]

Over a nine month period, Jerry Lee Smith mailed allegedly obscene materials to postal inspectors using fictitious names in Iowa. Smith was subsequently convicted in the District Court of Southern Iowa on seven counts of violating 18 U.S.C. section 1461, a federal statute which prohibits mailing obscene material. The U.S. Court of Appeals for the Eighth Circuit affirmed Smith's conviction, and the U.S. Supreme Court granted certiorari in 1976. In May of 1977, the Court upheld Smith's conviction, in a 5-4 decision, for violating the federal statute.

The District Court jury used the Miller v. California guidelines to help them ascertain whether the materials Smith mailed to the postal inspectors were obscene in reference

to their contemporary community mores. Justice Stevens voices a vigorous dissent in this case. For the most part, he addresses what he considers to be pitfalls and problems associated with local obscenity standards.

In his opinion Justice Stevens argues that the average community is no less diverse than the nation as a whole, and that the "standard for a metropolitan area is just as 'hypothetical and unascertainable' as any national standard."[12] Thus, insisting that a jury can better judge whether a defendant acted properly by considering a local standard of decency is a false presumption. Stevens believes there are four substantial reasons for advocating a national standard to determine obscenity.[13]

First, the justice feels that under the Miller v. California standard, prosecutors can adjust the boundaries of their communities in such an elastic manner that the defendant can be prejudiced in the eyes of the jury by the geographic change. Second, Stevens believes that after a national standard for defining obscenity is established, a large volume of decisional law will eventually accumulate, which can be used as a reference guide for future litigation. However, if each juror considers his own community standards in evaluating whether expression is obscene, his deliberations will be based upon what he perceives the standards to be - - he cannot base his conclusions on concrete precedent - - for each juror and every community is unique. Third, the former Seventh Circuit

Appeals judge[14] asserts that a juror needs the crutch of a national standard to determine whether a defendant's expression lies outside First Amendment protection, for otherwise, he might place too much emphasis on the opinions and attitudes that his fellow jurors espouse. For example, a juror might feel that a defendant's expression is not obscene, but when other jurors strongly voice their views conversely, he might conclude that his first reaction was abnormal and not consistent with the mores of the community. Says Stevens, "it is much more popular to be against a sin than to be tolerant to it."[15] Finally, an appellate court cannot review the finding of a trial court that has labeled material obscene in terms of local standards, for the criteria on which the jury based their decision are ephemeral and not at all clear. Justice Stevens notes, in summary:

> In the final analysis, the guilt or innocence of a criminal defendant in an obscenity trial is determined primarily by individual jurors' subjective reactions to the materials in question rather than by the predictable applications of rules of law.[16]

Proponents of local regulation of obscenity standards charge that if a national standard for determining obscenity is adopted, conservative communities will have to tolerate offensive expression that is condoned in more liberal areas. Stevens disputes this argument. He recognizes that a significant number of Americans wish to have access to sexually oriented material,[17] and he believes that the Constitution protects their right to receive these materials. It is not up to government to dictate what information is proper for the people to digest, stresses Stevens; rather, "we must rely

on the capacity of the free marketplace of ideas to distinguish that which is useful or beautiful from that which is ugly or worthless."[18] However, Stevens notes that the right to disseminate expression is not absolute - - an advertisement can be censured if it is misleading, and offensive language in a courtroom can be regulated. Stevens firmly believes that the content of speech is a determinant of the context in which it should be expressed.[19] Therefore, although he affirms the individual's right to obtain provocative expression, he emphasizes that this type of material must be regulated to protect those who do not wish to be subjected to it.[20]

On this point Stevens greatly differs with his precessor Justice William O. Douglas. Douglas generally was opposed to any restriction of expression, irrespective of the content or intrusive nature of the material.[21]

A national standard to define obscenity will merely provide a universal yardstick for deciding which materials are considered obscene and illegal to distribute, Stevens maintains. Each individual community will have the inherent power to regulate the time, place, and means by which protected sexually oriented expression is made accessible to the local populace.[22] In essence, Stevens is saying that people have a right to possess and secure sexually provocative expression that has not been determined obscene by a national standard, but communities have an equal right to decide how prominently these materials may be displayed or advertised.

Ward v. Illinois

A few weeks after Smith v. U.S. was decided, the U.S. Supreme Court decided another obscenity case: Ward v. Illinois. In this litigation the Illinois Supreme Court upheld a bookstore owner's conviction for selling sadomasochistic materials; the Court felt that the owner, Wesley Ward, had violated the state obscenity statute. The U.S. Supreme Court found that Ward had indeed broken the law, and affirmed his conviction. In doing so, however, the Court substantially revised one of the three guidelines set forth in the Miller v. California case to help communities determine whether material is obscene.[24] The Court's action seriously endangered First Amendment protection for expression previously unchallenged in court or specifically referred to by statute.

"Today the Court silently abandons one of the cornerstones of the Miller test announced so forcefully just five years ago," laments Justice Stevens in his dissent in Ward v. Illinois.[25] Stevens points out that one of the guidelines established in Miller prohibited prosecution for allegedly obscene materials unless a state statute specifically cites and defines what expression is offensive and liable to regulation or suppression. As previously mentioned, Justice Stevens is hardly an advocate of the Miller v. California precedent for evaluating obscenity. Yet, he believes that if the Miller decision had any redeeming characteristic at all, it was this provision for a specificity requirement, a measure that compels states to formulate statutes in such a terse fashion that only those types of expression mentioned

are susceptible to regulation.[26] Stevens asserts that this specificity requirement of Miller prompted more than 50 courts to reconsider their prosecutions of defendants who were charged with violating obscenity statutes.[27]

Stevens accuses Illinois of paying only "lip service" to the specificity requirement in Miller v. California.[28] Expression can be labeled obscene in Illinois if, when considered in its entirety, there appears to be a "shameful or morbid interest in nudity, sex, or excretion (that) . . . goes substantially behond customary limits of candor."[29] Stevens believes that this statute is unconstitutionally overbroad and vague. The Illinois Court disagrees. Citing a prior decision, the Illinois Court argues that since obscenity is so difficult to define, "the legislature deliberately chose to frame the provision in general terms, prompted by the futility of an effort to anticipate and enumerate all of the (types of obscenity) that fertile minds might devise."[30] Stevens retorts that laws defining obscenity are most often attacked for their lack of specificity and detail. The requirement in Miller promised partially to negate these criticisms, and now that the regulation has been invalidated, he believes the precedent of Miller v. California lacks utility altogether.[31]

Young v. American Mini Theaters[32]

Justice Stevens has been charged with sacrificing First Amendment rights to majoritarian tastes in two cases concerning obscenity.[33] In both instances, he has authored the Court's opinion.

The earliest case, Young v. American Mini Theaters, concerned a Detroit zoning ordinance adopted in November of 1972, which dispersed, rather than concentrated about the city, theaters that showed sexually explicit films. Detroit initiated this action because research conducted by the Common Council revealed that a concentration of "adult" theaters in one area had a tendency to attract undesirables, thereby decreasing property values, increasing crime and prostitution, and motivating reputable businesses and residents to move elsewhere.[34] The ordinance specifically required that an "adult" theater locate at least 1000 feet away from any two other regulated businesses, or 500 feet from areas zoned for residential use.

Two theaters sought a court injunction to nullify the ordinance on grounds that it was an unconstitutionally vague prior restraint on protected communication. The ordinance, the theaters claimed, violated the Equal Protection Clause of the Fourteenth Amendment. The theaters insisted that the Equal Protection Clause prohibited disparate treatment of protected expression on the basis of content.

The Detroit zoning ordinance states that a theater is classified as an "adult" theater if its presentations are, as a rule, characterized by an emphasis on sexually provocative matter.[35] The respondents in this case declare that what constitutes an "emphasis" on sex is unclear. Stevens quickly dismisses this assertion. He reasons that theaters other than those which advertise themselves as "adult" fa-

cilities cater to general audiences with wide ranging tastes. These theaters show a great variety of films, and although they might occasionally run a sexually explicit movie, their presentations are not generally characterized by such matter. However, theaters in the "adult" classification primarily exhibit sexually oriented films, and so any ambiguity in the ordinance regarding what constitutes an emphasis on sex will not pertain to them.

Then the two theaters contend that even if the vagueness in the ordinance isn't applicable to their circumstances, regular theaters will be chilled from exercising their First Amendment rights by not showing films that contain questionable content. Justice Stevens replies that regular theaters will not be chilled to any significant degree by the zoning ordinance, and if in the future they are, the small amount of uncertainty in the ordinance can easily be more narrowly worded by the state courts.

The theater owners further argue that the Detroit zoning ordinance is a prior restraint on constitutionally protected speech because movie theaters that are not licensed to show "adult" films will be prohibited from presenting any sexually provocative films unless they relocate. Justice Stevens admits that only specially licensed theaters are permitted to show "adult" movies in Detroit, but he emphasizes that there is nothing unusual about this stipulation. All films that are shown commercially can be exhibited only in licensed theaters.[36] Zoning laws apply to "non-adult" theaters as well.

Just because theaters are subject to city zoning and licensing requirements is no reason for denouncing the ordinance as a vehicle for prior restraint, explains Stevens. The 1000 foot restriction only regulates where films are shown; it does not prohibit their exhibition altogether.

The respondents then present their most formidable accusation. They stress that the crux of the matter is that the Detroit zoning ordinance unfairly discriminates between protected modes of communication, a direct violation of the Equal Protection Clause of the Fourteenth Amendment. It is on this precise issue that Stevens is reproached by Justices Stewart, Marshall, Brennan, and Blackmun for sacrificing inviolable constitutional tenets to majoritarian sentiment.[37]

In seeking to invalidate the respondents' charge, Stevens quotes and qualifies a famous statement attributed to the renown eighteenth century French philosopher Voltaire. Voltaire once declared, "I disapprove of what you say, but I will defend to the death your right to say it."[38] Stevens admires Voltaire's absolutist stand, but suggests that First Amendment protection for expression is often of necessity applicable to varying extent depending upon the inherent content of the expression; inciting violence or publishing information about troop movements during wartime can warrant censure of expression.[39] Similarly, the First Amendment (as interpreted by the courts) grants only partial protection to commercial expression; regulatory commissions may prohibit businesses from making deceptive claims.[40] By giving these

examples, Stevens seeks to prove that the Equal Protection Clause of the Fourteenth Amendment cannot practically be applied in an absolutist sense to First Amendment protection of non-obscene expression.

A city has a right to solve its problems, says Stevens, adding:

> Even though the First Amendment protects communication in this area from total supression . . . since what is ultimately at stake is nothing more than a limitation on the place where adult films may be exhibited . . . the city's interest in the present and future character of its neighborhoods adequately supports . . . use (of) the content of these materials as the basis for placing them in a different classification from other motion pictures.[41]

In essence, Justice Stevens is advocating a double standard for interpreting the Equal Protection Clause in regard to the First Amendment shield for non-obscene expression. Although this double standard is distasteful in light of statements like Voltaire's, Stevens believes as a matter of practicability, subjugation of the less virtuous elements of protected expression to interests of bettering the community is warranted.

In a strongly worded dissenting opinion, Justice Stewart, joined by Justices Brennan, Marshall, and Blackmun, attacks Stevens' contention that offensive but non-obscene expression, devoid of social or political value, is less deserving of First Amendment protection. Stewart implies that the First Amendment was written to be interpreted in the spirit of Voltaire's epic statement. Protected expression should never

be confined or curtailed by contemporary majoritarian tastes, he says, emphasizing:

> The fact that the 'offensive' speech here may not address 'important' topics - - 'ideas of social and political significance' - - does not mean that it is less worthy of constitutional protection . . . it is in those instances where protected speech grates most unpleasantly against the sensibilities that judicial vigilance must be at its height.[42]

FCC v. Pacifica Foundation[43]

Two years after Justice Stevens formulated his controversial opinion in Young v. American Mini Theaters, he again had the opportunity to author the Court opinion in an obscenity case: FCC v. Pacifica Foundation. In this case, a New York radio station broadcast at two o'clock in the afternoon on October 30, 1973, an allegedly patently offensive comedy monologue by humorist George Carlin that was entitled, "Filthy Words." After receiving a complaint from a citizen who heard the monologue in the presence of his young son, the Federal Communications Commission formally rebuked the station for airing the Carlin piece at a time when children made up a substantial portion of the listening audience. Although the radio station conceded that Carlin's monologue was patently offensive (distasteful to such a degree that it had a tendency to affront current community standards of decency), the station argued that the FCC had no authority to punish it for broadcasting the record. According to the radio station's interpretation of the pertinent federal statutes, a broadcast facility can air any programming except that which is obscene, and this

material clearly was not obscene. In turn, the FCC agreed with the station that Carlin's monologue was not obscene. However, the Commission labeled the "Filthy Words" piece indecent, and said that material so distinguished is to be channeled to "times of day when children most likely (will) not be exposed to it."[44]

The Supreme Court was to decide if the federal statute which regulates the content of public broadcasts, 18 U.S.C. section 1464, notes a separate category of expression aside from obscenity that may be suppressed, and if so, in what manner should this type of expression be regulated.

Pacifica Foundation, owner the N. Y. radio station, argues that no such categorical distinction between indecent and obscene material exists, for ever since the 1974 case of Hamling v. U.S.,[45] indecent expression has been held indistinguishable from that which is obscene. Thus, the station is protected by the First Amendment and should not be liable to FCC disciplinary action.

Unfortunately for Pacifica, Justice Stevens points out that in Hamling v. U.S. the Court combined indecent, profane, and obscene material into one unit because of the specific nature of the mode of communication at issue. In the Hamling case, the Court was concerned with 18 U.S.C. section 1461, which regulates the dissemination of printed matter mailed in opaque envelopes from one individual to another. In FCC v. Pacifica, at issue is 18 U.S.C. section 1464, which regulates the dissemination of public broadcasts that can be heard by

all. Stevens asserts that this statute makes a clear distinction between obscene and indecent language. He adds, "It is unrealistic to assume that Congress intended to impose precisely the same limitations on the dissemination of patently offensive matter by such different means."[46]

Stevens says that special measures must be imposed to regulate broadcast content because of radio's unique pervasive communication capabilities.[47] Stevens concedes that Carlin's monologue was not entirely undeserving of First Amendment protection, even though it "lacks literary, political, or scientific value."[48] He believes it should be aired. However, due to two unique facets of broadcasting, broadcasts such as Carlin's that are held to affront public decency must adhere to certain guidelines concerning the context in which they may be aired.

Firstly, broadcasting has an all pervasive presence, says Stevens, explaining:

> Patently offensive, indecent material presented over the airwaves confronts the citizen not only in public, but also in the privacy of the home, where the individual's right to be let alone plainly outweighs First Amendment rights of an intruder . . . To say that one may avoid further offense by turning off the radio when one hears indecent language is like saying that the remedy for an assault is to run away after the first blow.[49]

(Justice Stevens obviously subscribes to the provision established in Redrup v. New York, which forbade distributors of offensive material to make "an assault upon individual privacy . . . in a manner so obstrusive as to make it impossible for the unwilling individual to avoid exposure to it."[50])

Secondly, Stevens asserts that broadcasting is the only form of communication where the young can gain free access to offensive expression. For example, children can be prohibited from purchasing obscene books or viewing indecent movies, but no law exists which forbids minors from listening to the radio. "The ease with which children may obtain access to broadcast material . . . amply justifies special treatment of indecent broadcasting," says the new justice.[51]

As he has asserted in previous cases, Justice Stevens argues that the content of protected expression determines the context in which it may be tolerated. In FCC v. Pacificia, it becomes readily apparent that Stevens is an advocate of variable obscenity, a term used in the case of Ginsberg v. New York,[52] which established the concept that some materials are not obscene for adult consumption, but are obscene when children are present. Stevens has construed the concept of variable obscenity to include indecent language as well. In this instance, Justice Stevens deems that since radio is such an intrusive, universally encompassing medium, the makeup of the target audience should directly reflect the context in which an indecent program should be aired.

Justice Brennan filed a dissenting opinion in FCC v. Pacifica, accusing justice Stevens, as did Justice Stewart in Young v. American Mini Theaters, of sacrificing inviolable First Amendment tenets to majoritarian tastes.[53] Brennan says that patently offensive non-obscene radio broadcasts do not need to be regulated. Expounding further, he states that

> . . . an individual's actions in switching on and listening to communications transmitted over the public airways and directed to the public at large do not implicate fundamental privacy interests, even when engaged in the home. Instead, because the radio is undeniably a public medium, these actions are more properly viewed as a decision to take part, if only as a listener, in an on-going public discourse.[54]

Brennan, unlike Stevens, doesn't recognize a separate category of expression which is subject to regulation. He emphasizes that the Court said in Cohen v. California[55] that "under any test of obscenity as to minors . . . to be obscene 'such expression must be, in some way, erotic.'" All parties concerned agree that Carlin's monologue wasn't erotic or obscene. Therefore, Brennan charges that Justice Stevens and the Court are prohibiting minors from listening to broadcasts protected by the First Amendment.

Splawn v. California[56]

In 1971, Roy Splawn was convicted by a California trial court for selling two reels of obscene film. He contested his conviction on the grounds that his constitutional rights had been abridged because the judge instructed the jury to consider not only if the films themselves were obscene, but whether or not the manner in which he had promoted the films was obscene.

By a 5-4 margin, the U.S. Supreme Court upheld Splawn's conviction in 1977, citing the precedents of Hamling v. U.S.[57] and Ginzburg v. U.S.,[58] as evidence that pandering can be admitted for consideration by a jury in an obscenity case. Pan-

dering was defined by Justice Brennan in Ginzburg v. U.S. as "the business of purveying textural or graphic matter openly advertised to appeal to the erotic interest of . . . the customers."[59]

Justice Stevens disagrees with the majority opinion in the Splawn case. He disdains pandering as a supplementary standard with which to gauge whether expression is obscene. He stresses that in this instance, the jury convicted the defendant not because the material he was selling was determined to be obscene, but because the manner in which he advertised his merchandise was sexually provocative.

Stevens asserts that the First Amendment protects advertising that is neither offensive nor misleading. He argues that Splawn's advertisements were truthful, non-offensive portrayals of his product. Whether or not his films were as obscene as he promised them to be in his advertisements is no basis for automatically labeling them obscene. All the defendant did, exclaims Stevens, was try to describe his product in such a way that those who weren't interested in erotic materials would be forewarned not to purchase his films. Justice Stevens adds:

> Under any sensible regulatory scheme, truthful description of subject matter that is pleasing to some and offensive to others ought to be encouraged, not punished.
>
> I would not send Mr. Splawn to jail for telling the truth about his shabby business.[60]

Can an overall view of Justice Steven stand on obscenity be gleaned from the opinions he has written for the Court since 1975? Undoubtedly, the justice is an advocate of a

a national standard for defining obscenity, as evidenced by his writings in Smith v. U.S., Marks v. U.S., and Ward v. Illinois. He has emphasized that expression not deemed obscene should be accessible to the public; yet, to protect those who do not wish to be subjected to offensive expression, local communities should have the right to determine to what degree and in what manner offensive expression can be displayed. Thus, Stevens claims that the content of non-obscene speech is a prime determinant of the context in which it may be expressed.

Stevens' reasoning in FCC v. Pacifica is supportive of the concept of variable obscenity; he believes that broadcasting, because of its pervasive and intrusive nature, needs to be regulated to a greater extent than other means of communication. Offensive expression must be channeled to times when children are not present, says Stevens, even if the speech in question is only considered indecent and not obscene.

The Justice has also ascertained that as a practical matter, some types of protected speech must supercede others, in order for society to improve the overall condition of the environment (Young v. American Mini Theaters). And finally, Stevens says that an individual should only be convicted of disseminating obscene expression upon examination of the material in question. Material should not be condemned, stresses Stevens, simply because of the provocative claims of its advertisements (Splawn v. California).

Notes

[1]Smith v. U.S., 2 Med. L. Rptr. 1833, 1844 (1977).

[2]Harold L. Nelson and Dwight L. Teeter, Law of Mass Communications, p. 378

[3]Ibid., p. 348.

[4]Marks v. U.S., 2 Med. L. Rptr. 1401 (1977); Smith v. U.S., 2 Med. L. Rptr. 1833 (1977); Splawn v. California, 2 Med. L. Rptr. 1881 (1977); Pinkus v. U.S., 3 Med. L. Rptr. 2329 (1978); Young v. American Mini Theaters, 1 Med. L. Rptr. 1151 (1976); Ward v. Illinois, 2 Med. L. Rptr. 1929, (1977); FCC v. Pacifica, 3 Med. L. Rptr. 2553 (1978).

[5]Smith v. U.S., At p. 1841 see also FCC v. Pacifica, At p. 2562.

[6]Pinkus v. U.S., At p. 2334.

[7]Smith v. U.S., At pp. 1842-1843.

[8]Nelson & Teeter, op. cit., p. 379.

[9]Jacobellis v. Ohio, 378 U.S. 184, 194-195 (1964).

[10]Nelson & Teeter, op. cit., p. 382.

[11]Smith v. U.S., At 1833 (1977).

[12]Ibid., p. 1842.

[13]Ibid., p. 1843.

[14]"The Changing Court: Where Stevens Fits In," U.S. News, 79, December 15, 1975, pp. 24-5.

[15]Smith v. U.S., At p. 1843.

[16]Ibid.

[17]Ibid., p. 1845.

[18]Ibid.

[19]Ibid., p. 1844. see also FCC v. Pacifica, At p. 2560.

[20]Ibid.

[21]Redrup v. New York, 386 U.S. 767, 770 (1967) - inferring that Justice Douglas was one of the two justices mentioned in the unsigned majority opinion that was adverse to restrictions of any type on expression.

[22]Smith v. U.S., At p. 1845.

[23]Ward v. Ill., At p. 1929.

[24]Ibid., p. 1933.

[25]Ibid.

[26]Ibid., p. 1935.

[27]Ibid., p. 1933.

[28]Ibid.

[29]Ill. Rev. Stat., C. 38 §11-20 (b).

[30]People v. Raby, 40 Ill. 2d 392, 396 (1968) - material in parenthesis substituted for original text for purposes of clarification.

[31]Ward v. Ill., At p. 1935.

[32]Young v. American Mini Theaters, At 1151 (1976).

[33]Ibid., p. 1165. See also FCC v. Pacifica, At p. 2569.

[34]Young v. American Mini Theaters, pp. 1152-1153.

[35]Ibid., p. 1152.

[36]Ibid., p. 1155.

[37]Ibid., p. 1165.

[38]S. Tallentyre, The Friends of Voltaire, (1907) p. 199.

[39]Young v. American Mini Theaters, At p. 1157.

[40]Ibid., p. 1158.

[41]Ibid., p. 1159.

[42]Ibid., p. 1165.

[43]FCC v. Pacifica Foundation, At p. 2553.

[44]Ibid., p. 2555.

[45]Hamling v. U.S., 418 U.S. 87 (1974).

[46]FCC v. Pacifica, At p. 2559.

[47]Ibid., pp. 2560-2561.

[48]Ibid., p. 2561.

[49]Ibid., p. 2562.

[50]Redrup v. New York, 386 U.S. 767 (1967) see also Nelson & Teether, op. cit., p. 370.

[51]FCC v. Pacifica, At p. 2562.

[52]Ginsberg v. N.Y., 390 U.S. 629 (1968).

[53]FCC v. Pacifica, At p. 2569.

[54]Ibid., p. 2568.

[55]Cohen v. California, 403 U.S. 15, 20 (1971).

[56]Splawn v. California, At p. 1881.

[57]Hamling v. U.S., At p. 87.

[58]Ginzburg v. U.S. 383 U.S. 463 (1966).

[59]Ibid., p. 467.

[60]Splawn v. California, At pp. 1884-1885.

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